

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6967 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

SUPRABHAT SAHKARI BANK LIMITED

Versus

GUJARAT STEEL SYNDICATE

Appearance:

MR PV NANAVATI for Petitioner

MR KM SHETH for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 26/02/97

ORAL JUDGEMENT

Rule.Mr.K.M.Sheth, learned Advocate, waives service of rule for the respondents.

In the facts of the case, the matter is finally heard today.

Petitioner, the Suprabhat Sahkari Bank Limited instituted the Arbitration (Lavad) Suit No.99/92 against the respondents for recovery of Rs.1,56,824/- under section 96 of the Gujarat Co-operative Societies Act,1961. The respondents, who are the original defendants in the said suit, filed the written statement contending, inter alia, that the suit was filed wrongly against them, as the defendants had already paid Rs.1,11,925-98 ps. and the Bank's former Manager had issued necessary certificate in respect of payment of the outstanding dues of the defendants. According to the defendants, there was no amount due and payable by them to the plaintiff-Bank.

The defendants by their application Exh.33 in the said suit contended that the defendants had already paid the due and payable amount to the plaintiff-Bank and the former Manager of the Bank having issued no due certificate, the suit was not maintainable and was required to be dismissed. The defendants, therefore, prayed for dismissal of the suit on that count. It was contended on behalf of the Bank that pursuant to the provisions of the bye-laws of the plaintiff-Bank, the Manager was not authorised nor he had any power or jurisdiction to issue such no-due certificate to any debtor and that the matter was required to be reported to the Board of Directors. The then Bank Manager did not inform the Board of Directors with regard to such payment or issuance of the certificate and as such the Bank Manager was not competent to issue such certificate. The Joint Registrar and the learned Member of the Board of Nominees at Ahmedabad, by order dated May 15, 1995 dismissed the said application Exh.33 holding that an important issue with regard to the legality and validity of the no due certificate was involved in the suit and as such the suit could not have been dismissed at that stage.

The defendants being aggrieved by the said order, preferred Revision Application No.155/95 before the Gujarat State Co-operative Tribunal at Ahmedabad, who by its judgment and order dated July 31,1996 allowed the revision application and dismissed the suit of the petitioner-Bank. The Tribunal accepted the application Exh.33 holding, inter alia, that it was not important or relevant if the Manager had any such power or authority to issue no due certificate, since he was the Officer within the meaning of sec.2(14) of the said Act.

I have heard the learned Advocates appearing for both the sides. It appears that the Tribunal did not appreciate the issue about the legality and validity of the no due certificate issued by the then Manager of the Plaintiff-Bank. It was specifically contended by the petitioner-Bank that in view of the provisions of the bye-laws of the petitioner-Bank, the Manager was not authorised or competent to issue such certificate and that it was within the powers and authority of the Board of Directors and the Manager was supposed to refer the matter to the Board of Directors and on approval of the Board, such certificate could have been issued. The Tribunal has not examined this position of bye-laws in its proper perspective and erroneously concluded that the Manager being the Officer of the Bank, could have issued the Certificate and if he had no such authority, the Bank could have proceeded against the Manager by initiating proceedings against him. The reasoning assigned by the Tribunal do not appear to be correct, inasmuch as the term "officer" as defined in section 2(14) of the Act means a person elected or appointed by a society to any office of such society according to its bye-laws and it includes among others, the Manager. However, the former Manager of the Bank being the officer within the meaning of section 2(14) of the Act, by itself the power, authority or jurisdiction cannot be said to be conferred on him for issuing such no due certificate. The suit was for Rs.1,56,824/-, whereas the alleged payment by the defendants is to the tune of Rs.1,11,924-98ps., taking the share value of Rs.45,000/- in the calculation. In fact, it transpires from the record that the entire suit amount was not paid nor any certificate specifying the entire claim of the Bank was satisfied.

Mr.K.M.Sheth, learned Advocate appearing for the respondents, relied on section 150(9) of the Gujarat Co-operative Societies Act, 1961. Section 150 deals with the constitution of the Gujarat State Co-operative Tribunal and the powers and functions to be exercised by the Tribunal. Sub-section (9) thereof provides that the Tribunal may call for and examine the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. If in any case, it appears to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem just. It is true that

the Tribunal has revisional powers. However, these powers are to be exercised legally and judicially. In the facts and circumstances of the case, the Tribunal has brushed aside the important issue involved in the proceedings about the competence of the Manager of the petitioner-Bank. In the facts of the case, the decision rendered by the Tribunal is not in accordance with the law, as it is contrary to the bye-laws of the petitioner-Bank.

In the above view of the matter, the petition deserves to be allowed.

In the result, the petition is allowed. The impugned order passed by the Tribunal is quashed and set aside, and the order of the learned Member of the Board of Nominees, Ahmedabad, is restored. The matter is ordered to be remanded to the Court of Board of Nominees, Ahmedabad, for disposal of Lavad Suit No.99/92 on merits and in accordance with the law. Rule is accordingly made absolute with no order as to costs.
